

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

HARRY A. SCHEINA, III,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 18-3210
	)	
JAMES SIGMAN,	)	
	)	
Defendants.	)	

**ANSWER**

**COMES NOW** the Defendant, Sheriff James Sigman, by and through his undersigned counsel, and states the following by way of answer to Plaintiff's "Complaint Under the Civil Rights Act of 42 U.S.C. § 1983."

- I. Defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of paragraph I and, therefore, denies the same.
- II. Defendant states as follows:
  - A. Defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of paragraph II(A) and, therefore, denies the same.
  - B. Defendant admits so much of paragraph II(B) as alleges that he is the Sheriff of Texas County, Missouri.
- III. Defendant admits so much of Plaintiff's paragraph III as alleges that Plaintiff's claims do not involve medical treatment.
- IV. Defendant admits Plaintiff has requested a jury trial.
- V. Defendant admits that Plaintiff is seeking money damages, but denies that

Plaintiff is entitled to such.

VI. Defendant expressly denies the “wrongs” alleged in Plaintiff’s complaint, and denies that the alleged “wrongs” ever occurred or are continuing to occur. Defendant denies the remaining allegations in paragraph VI, if any.

VII. Defendant admits that the Texas County Jail has a grievance procedure, and admits and affirmative states that Plaintiff failed and refused to follow it. Defendant denies the remaining allegations in paragraph VII, if any.

VIII. Defendant states as follows:

A. Defendant admits that Plaintiff has initiated other litigation in this Court dealing with the same facts involved in this case. See Case No. 6:18-cv-03169, Doc. No. 1. When ordered to amend his Complaint, Plaintiff failed to include any allegations against Sheriff Sigman in his Amended Complaint, Doc. No. 7, thereby abandoning said claims. *Witte v. Culton*, 2012 WL 5258789, at \*4 (E.D. Mo. Oct. 24, 2012) (pro se plaintiff deemed to have abandoned claims by failing to include them in amended complaint); *Foor v. Citi Mortgage, Inc.*, 2016 WL 5799320, at \*3 (W.D. Mo. Oct. 3, 2016) (same).

B. Defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of paragraph VIII(B) and, therefore, denies the same.

C. Defendant denies that Case No. 6:18-cv-03169 remains “pending” or “undisposed” as alleged in paragraph VIII(C), said case having been dismissed by Order of the Court, Doc. No. 15 dated August 2, 2018. Defendant denies the remaining allegations in paragraph VIII(C), inclusive of subparagraphs (1)-(8), if any.

IX. Defendant states that the allegations in paragraph IX are so compound, vague and ambiguous that they do not permit Defendant to form a reasonable response. To the extent a response may be deemed required, Defendant denies each and every allegation set forth in paragraph IX, inclusive of subparagraphs (A)-(B) and the supplemental form incorporated thereby.

X. Defendant denies that Plaintiff has suffered any damages, denies having caused any damages to Plaintiff, and denies that Plaintiff is entitled to compel Defendant's resignation or compel any changes to Texas County policies, procedures and training, and denies that Plaintiff is entitled to payment of his medical expenses, if he in fact incurred any. Defendant denies the remaining allegations in paragraph X, if any.

XI. Defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of paragraph XI, including subparagraphs (A) through (C) and, therefore, denies the same.

**DEFENDANT ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:**

1. Defendant incorporates his responses to Paragraphs I-XI as though fully set forth in the herein.
2. Defendant denies each and every allegation set forth in Plaintiff's Complaint, except those specifically admitted herein.
3. Plaintiff's Complaint herein fails, in whole or in part, to state a claim against Defendant upon which relief may be granted.

4. Defendant asserts that the doctrine of qualified immunity is applicable to each and every cause of action set forth in the Complaint, and that Plaintiff is barred, in whole or in part, from asserting and pursuing recovery on said actions.

5. Defendant asserts that the doctrine of official immunity is applicable to each and every cause of action set forth in the Complaint, and that Plaintiff is barred, in whole or in part, from asserting and pursuing recovery on said actions.

6. Defendant asserts that the public duty doctrine is applicable to each and every cause of action set forth in the Complaint, and that Plaintiff is barred, in whole or in part, from asserting and pursuing recovery on said actions.

7. Defendant asserts that the doctrine of sovereign immunity is applicable to each and every cause of action set forth in the Complaint, and that Plaintiff is barred, in whole or in part, from asserting and pursuing recovery on said actions.

8. Defendant avers that Plaintiff's cause of action is frivolous and that at such time as Defendant prevails on Plaintiff's Complaint, Defendant is entitled to an award of attorney fees and costs under 42 U.S.C. § 1988.

9. Plaintiff failed to exhaust his administrative remedies at the Texas County Jail prior to filing suit.

10. Plaintiff's claims are barred, in whole or in part, by waiver or abandonment.

11. Plaintiff's recovery is barred, in whole or in part, by his failure to mitigate his damages.

12. Defendant reserves the right to assert and plead additional affirmative defenses when facts supporting such defenses become known and available during the course of this litigation.

13. Defendant hereby requests that a trial by jury be had on all issues so triable.

**WHEREFORE**, Defendant Sheriff James Sigman, having answered to the Complaint of Plaintiff, prays to be discharged thereon, be awarded his costs and attorney fees, and for such other and further relief as the Court deems just and proper in the premises.

KECK & AUSTIN, L.L.C.

By /s/ Matthew D. Wilson  
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Attorneys for Defendants

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that a true and accurate copy of the foregoing Defendant's Answer was forwarded to plaintiff by U.S. First Class postage pre-paid, this 8th day of August, 2018 to:

Mr. Harry A. Scheina, III #1018855  
30227 US Highway 136  
Maryville, MO 64468

/s/ Matthew D. Wilson  
Matthew D. Wilson